

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 271

SENATE BILL 1275

AN ACT

AMENDING SECTIONS 5-395.02 AND 5-395.04, ARIZONA REVISED STATUTES; AMENDING SECTION 28-1301, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 312, SECTION 2; AMENDING SECTIONS 28-1304 AND 28-1323, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 4, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 28-1465, 28-1466 AND 28-1467; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-395.02, Arizona Revised Statutes, is amended to
3 read:

4 5-395.02. Admissibility of breath test or other records;
5 adoption of rules for tests; permits

6 A. The results of a breath test administered for the purpose of
7 determining a person's alcohol concentration as defined in section 5-395 are
8 admissible as evidence in any trial, action or proceeding on establishing the
9 following foundational requirements:

10 1. The test was performed using a quantitative breath testing device
11 approved by the department of health services OR THE DEPARTMENT OF PUBLIC
12 SAFETY. A properly authenticated certification by the department of health
13 services OR THE DEPARTMENT OF PUBLIC SAFETY OR JUDICIAL NOTICE OF DEPARTMENT
14 OF HEALTH SERVICES OR DEPARTMENT OF PUBLIC SAFETY RULES is sufficient to
15 establish this requirement.

16 2. The operator who conducted the test possessed a valid permit issued
17 by the department of health services OR THE DEPARTMENT OF PUBLIC SAFETY to
18 operate the device used to conduct the test.

19 3. Duplicate tests were administered and the test results were within
20 0.02 alcohol concentration of each other or an operator observed the person
21 charged with the violation for twenty minutes immediately preceding the
22 administration of the test.

23 4. The operator who conducted the test followed an operational
24 checklist approved by the department of health services OR THE DEPARTMENT OF
25 PUBLIC SAFETY for the operation of the device used to conduct the test. The
26 testimony of the operator is sufficient to establish this requirement.

27 5. The device used to conduct the test was in proper operating
28 condition. Records of periodic maintenance that show that the device was in
29 proper operating condition ~~at a time before and after the test~~ are admissible
30 in any proceeding as prima facie evidence that the device was in proper
31 operating condition at the time of the test. ~~Such~~ CALIBRATION CHECKS WITH A
32 STANDARD ALCOHOL CONCENTRATION SOLUTION BRACKETING EACH PERSON'S DUPLICATE
33 BREATH TEST ARE ONE TYPE OF RECORDS OF PERIODIC MAINTENANCE THAT SATISFIES
34 THE REQUIREMENTS OF THIS SECTION. THE records are public records.

35 B. Compliance with subsection A of this section is the only
36 requirement for the admission in evidence of a breath test result.

37 C. THE INABILITY OF ANY PERSON TO OBTAIN MANUFACTURER'S SCHEMATICS AND
38 SOFTWARE FOR A QUANTITATIVE BREATH TESTING DEVICE THAT IS APPROVED AS
39 PRESCRIBED IN SUBSECTION A OF THIS SECTION SHALL NOT AFFECT THE ADMISSIBILITY
40 OF THE RESULTS OF A BREATH TEST PURSUANT TO THIS SECTION.

41 ~~G.~~ D. Records that may be obtained or are otherwise maintained
42 pursuant to section 28-1327 are admissible as evidence in any trial, action
43 or proceeding.

1 Sec. 2. Section 5-395.04, Arizona Revised Statutes, is amended to
2 read:

3 5-395.04. Preliminary breath tests; authority

4 A. A law enforcement officer who has reasonable suspicion to believe
5 that a person has committed a violation of section 5-395 may request that the
6 person submit to a preliminary breath test or tests before an arrest.

7 B. In addition to a breath test or tests the officer may require that
8 the person submit to further testing pursuant to section 5-395.03.

9 C. The director of the department of health services OR THE DEPARTMENT
10 OF PUBLIC SAFETY shall adopt rules prescribing the approval of quantitative
11 preliminary breath testing devices.

12 Sec. 3. Section 28-1301, Arizona Revised Statutes, as amended by Laws
13 2005, chapter 312, section 2, is amended effective from and after August 31,
14 2006, to read:

15 28-1301. Definitions

16 In this chapter, unless the context otherwise requires:

17 1. "Certified ignition interlock device" means an ignition interlock
18 device that is certified pursuant to article 5 of this chapter.

19 2. "Commercial motor vehicle" means a motor vehicle or combination of
20 motor vehicles used to transport passengers or property if the motor vehicle
21 either:

22 (a) Has a gross combined weight rating of twenty-six thousand one or
23 more pounds inclusive of a towed unit with a gross vehicle weight rating of
24 more than ten thousand pounds.

25 (b) Has a gross vehicle weight rating of twenty-six thousand one or
26 more pounds.

27 (c) Is a school bus.

28 (d) Is a bus.

29 (e) Is used in the transportation of materials found to be hazardous
30 for the purposes of the hazardous materials transportation act (49 United
31 States Code sections 5101 through 5127) and is required to be placarded under
32 49 Code of Federal Regulations section 172.504, as adopted by the department
33 pursuant to chapter 14 of this title.

34 3. "Education" means a program in which a person participates in at
35 least sixteen hours of classroom instruction relating to alcohol or other
36 drugs.

37 4. "Ignition interlock device" means a device that is based on alcohol
38 specific electrochemical fuel sensor technology that meets the national
39 highway traffic safety administration specifications, that connects a breath
40 analyzer to a motor vehicle's ignition system, that is constantly available
41 to monitor the concentration by weight of alcohol in the breath of any person
42 attempting to start the motor vehicle by using its ignition system and that
43 deters starting the motor vehicle by use of its ignition system unless the
44 person attempting to start the motor vehicle provides an appropriate breath

1 sample for the device and the device determines that the concentration by
2 weight of alcohol in the person's breath is below a preset level.

3 5. "Installer" means a person who ~~installs~~ IS CERTIFIED BY THE
4 DEPARTMENT TO INSTALL ignition interlock devices and ~~provides~~ PROVIDE
5 services TO THE PUBLIC related to ignition interlock devices.

6 6. "License" means any license, temporary instruction permit or
7 temporary license issued under the laws of this state or any other state
8 pertaining to the licensing of persons to operate motor vehicles.

9 7. "Manufacturer" means a person who ~~offers~~ IS CERTIFIED BY THE
10 DEPARTMENT TO OFFER ignition interlock devices for installation in motor
11 vehicles in this state.

12 8. "Screening" means a preliminary interview and assessment of an
13 offender to determine if the offender requires alcohol or other drug
14 education or treatment.

15 9. "Tampering" means an overt or conscious attempt to physically
16 disable, circumvent or otherwise disconnect the certified ignition interlock
17 device from its power source that allows the operator to start the engine
18 without taking and passing the requisite breath test.

19 10. "Treatment" means a program consisting of at least twenty hours of
20 participation in a group setting dealing with alcohol or other drugs in
21 addition to the sixteen hours of education.

22 Sec. 4. Section 28-1304, Arizona Revised Statutes, is amended
23 effective from and after August 31, 2006, to read:

24 28-1304. Driving under the influence abatement fund

25 A. The driving under the influence abatement fund is established
26 consisting of monies deposited pursuant to section 28-1382, subsection D,
27 paragraph 3 and subsection F, paragraph 3 and section 28-1383, subsection J,
28 paragraph 2.

29 B. The oversight council on driving or operating under the influence
30 abatement established by section 28-1303 shall administer the fund.

31 C. Twenty-five per cent of the monies deposited in the fund shall be
32 used for grants for innovative programs pursuant to section 28-1303,
33 subsection H, paragraph 2 and seventy per cent of the monies deposited in the
34 fund shall be used for grants to political subdivisions and tribal
35 governments pursuant to section 28-1303, subsection H, paragraph 1.

36 D. Not more than five per cent of the monies deposited in the fund
37 shall be used for BOTH OF THE FOLLOWING:

38 1. Administrative purposes of the oversight council on driving or
39 operating under the influence abatement.

40 2. PAYMENT OF THE COSTS OF NOTIFICATION PRESCRIBED BY SECTION 28-1467.

41 E. Monies in the fund are:

42 1. Continuously appropriated.

43 2. Exempt from the provisions of section 35-190 relating to lapsing of
44 appropriations.

1 F. On notice from the oversight council on driving or operating under
2 the influence abatement, the state treasurer shall invest and divest monies
3 in the fund as provided in section 35-313, and monies earned from investments
4 shall be credited to the fund.

5 Sec. 5. Section 28-1323, Arizona Revised Statutes, is amended to read:
6 28-1323. Admissibility of breath test or other records

7 A. The results of a breath test administered for the purpose of
8 determining a person's alcohol concentration are admissible as evidence in
9 any trial, action or proceeding on establishing the following foundational
10 requirements:

11 1. The test was performed using a quantitative breath testing device
12 approved by the department of health services or the department of public
13 safety. A properly authenticated certification by the department of health
14 services or the department of public safety or judicial notice of department
15 of health services or the department of public safety rules is sufficient to
16 establish this requirement.

17 2. The operator who conducted the test possessed a valid permit issued
18 by the department of health services or the department of public safety to
19 operate the device used to conduct the test.

20 3. Duplicate tests were administered and the test results were within
21 0.02 alcohol concentration of each other or an operator observed the person
22 charged with the violation for twenty minutes immediately preceding the
23 administration of the test.

24 4. The operator who conducted the test followed an operational
25 checklist approved by the department of health services or the department of
26 public safety for the operation of the device used to conduct the test. The
27 testimony of the operator is sufficient to establish this requirement.

28 5. The device used to conduct the test was in proper operating
29 condition. Records of periodic maintenance that show that the device was in
30 proper operating condition ~~at a time before and after the test~~ are admissible
31 in any proceeding as prima facie evidence that the device was in proper
32 operating condition at the time of the test. CALIBRATION CHECKS WITH A
33 STANDARD ALCOHOL CONCENTRATION SOLUTION BRACKETING EACH PERSON'S DUPLICATE
34 BREATH TEST ARE ONE TYPE OF RECORDS OF PERIODIC MAINTENANCE THAT SATISFIES
35 THE REQUIREMENTS OF THIS SECTION. The records are public records.

36 B. Compliance with subsection A of this section is the only
37 requirement for the admission in evidence of a breath test result.

38 C. THE INABILITY OF ANY PERSON TO OBTAIN MANUFACTURER'S SCHEMATICS AND
39 SOFTWARE FOR A QUANTITATIVE BREATH TESTING DEVICE THAT IS APPROVED AS
40 PRESCRIBED IN SUBSECTION A OF THIS SECTION SHALL NOT AFFECT THE ADMISSIBILITY
41 OF THE RESULTS OF A BREATH TEST PURSUANT TO THIS SECTION.

42 ~~C.~~ D. Records that may be obtained or that are otherwise maintained
43 pursuant to section 28-1327 are admissible as evidence in any trial, action
44 or proceeding.

1 Sec. 6. Title 28, chapter 4, article 5, Arizona Revised Statutes, is
2 amended effective from and after August 31, 2006, by adding sections 28-1465,
3 28-1466 and 28-1467, to read:

4 28-1465. Rule making; manufacturers and installers

5 THE DIRECTOR SHALL ADOPT RULES PURSUANT TO TITLE 41, CHAPTER 6 AS THE
6 DIRECTOR DEEMS NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS
7 ARTICLE AND CERTIFICATION AND DECERTIFICATION OF IGNITION INTERLOCK DEVICE
8 MANUFACTURERS AND INSTALLERS.

9 28-1466. Display of certification; transfer prohibited

10 A CERTIFICATION ISSUED PURSUANT TO THIS ARTICLE:

11 1. SHALL BE CONSPICUOUSLY DISPLAYED IN THE PLACE OF BUSINESS FOR WHICH
12 IT WAS OBTAINED.

13 2. IS NOT TRANSFERABLE OR SUBJECT TO SALE OR REASSIGNMENT.

14 28-1467. Installer and manufacturer certification; cancellation;
15 notice

16 IF THE DIRECTOR CANCELS AN INSTALLER'S OR MANUFACTURER'S CERTIFICATION
17 PURSUANT TO A RULE ADOPTED BY THE DIRECTOR, THE DIRECTOR SHALL NOTIFY EACH
18 PERSON WITH AN IGNITION INTERLOCK DEVICE FROM THE INSTALLER THAT THE PERSON
19 HAS THIRTY DAYS TO OBTAIN ANOTHER INSTALLER.

20 Sec. 7. Emergency

21 This act is an emergency measure that is necessary to preserve the
22 public peace, health or safety and is operative immediately as provided by
23 law.

APPROVED BY THE GOVERNOR MAY 11, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2006.